

Amendment No. 1 to SB1271

Bailey
Signature of Sponsor

AMEND Senate Bill No. 1271

House Bill No. 1015*

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Title 56, is amended by adding the following as a new chapter:

56-62-101. Chapter definitions.

As used in this chapter:

- (1) "Commissioner" means the commissioner of commerce and insurance;
- (2) "Department" means the department of commerce and insurance;
- (3) "Discount plan":
 - (A) Means a card, or other purchasing mechanism or device, that is not insurance and purports to offer discounts or access to discounts to a member for dental services, vision services, or retail purchases of prescription drugs from licensed pharmacies; and
 - (B) Does not include:
 - (i) A discount card or drug benefit plan provided by a self-insured employer's group health benefits plan;
 - (ii) A discount plan offered by an insurer licensed under this title in conjunction with health insurance;
 - (iii) A dental service plan regulated by the Dental Service Plan Law, 1961, compiled in chapter 30 of this title; or

(iv) A vision service plan regulated by the Vision Service

Plan Law, compiled in chapter 31 of this title;

(4) "Marketer" means a person or entity that offers, sells, markets, advertises, or otherwise distributes a discount plan, including a private label entity that places its name on, and markets or distributes, a discount plan pursuant to a marketing agreement with a discount plan operator;

(5) "Member" means an individual who pays fees, dues, charges, or other consideration for the right to enroll to receive the purported benefits of a discount plan;

(6) "Operator":

(A) Means a person that engages as principal in the business of offering, selling, marketing, advertising, or otherwise distributing a discount plan within this state; and

(B) Does not include discount cards offered by a nonprofit association to its members as an incidental benefit to membership in the association as long as that membership in the association entitles members to apply for insurance or other health benefits that are available only to members of the association;

(7) "Person" means an individual, corporation, partnership, association, joint venture, joint stock company, trust, unincorporated organization, limited liability company, similar entity, or combination of these entities; and

(8) "Prescription drug" has the same meaning as defined in § 63-10-204.

56-62-102. Certificate of registration required by operator of discount plan — Application.

(a) An operator of a discount plan must obtain a valid certificate of registration from the commissioner. A certificate of registration is not required for a marketer. A certificate of registration is valid for one (1) year from the date of issuance. In order to

receive a valid certificate of registration, an operator must file an application on a form adopted by the commissioner and provide, or demonstrate, to the commissioner the following:

(1) The name and principal place of business of the operator; and

(2) The name and address of the agent in this state for service of process.

(b) Notwithstanding any law to the contrary, it is a violation of this chapter for an operator, on or after August 1, 2022, to sell, market, promote, advertise, or otherwise distribute a discount plan in this state without first complying with the registration provisions of this chapter and complying with §§ 47-18-2701 and 47-18-2702.

56-62-103. Information required to be provided to members.

(a) A discount card or materials distributed on behalf of a discount plan covered under this chapter must expressly provide, in bold and reasonably prominent type, that the card or plan does not constitute insurance. The card or distributed materials must also contain a toll-free number for customer service and provide the operator's corporate name and a website address, if applicable.

(b) The operator must provide a prospective member, prior to becoming a member, with a complete description of the fees that a member of the plan could be assessed, including one-time non-refundable processing fees, upfront fees, or membership fees associated with the plan, along with the estimated average savings typically associated with the plan's general terms and conditions.

(c) An operator must provide a member with:

(1) An annually updated network directory of participating pharmacies, dentists, and vision care providers or access to the information online or by a toll-free number;

- (2) An annually updated list of the prescription drugs covered by the card or plan or access to the information online, by a toll-free number, or by way of a notation that the plan is an open formulary; and
- (3) A toll-free number for customer service.

56-62-104. Cancellation by members.

(a) A member has the right to cancel membership in a plan within thirty (30) days of joining the plan and has the right to have refunded membership fees paid during that initial membership, except for a one-time nominal processing fee.

(b) After the initial thirty-day membership period, a member has the right to cancel membership, in accordance with the policies established by the operator. An operator must provide information concerning the cancellation policy to the member at the time of the initial membership and cannot change the cancellation policy unless the operator provides the member with written notice at least thirty (30) days prior to the date the change takes effect.

56-62-105. Additional consumer protections.

(a) An operator or marketer shall not:

- (1) Describe or characterize the discount plan as being insurance;
- (2) Use or approve for use in its cards or distributed materials the terms "health plan," "coverage," "copay," "copayments," "deductible," "preexisting conditions," "guaranteed issue," "premium," "PPO," "preferred provider organization," or other terms in a manner that could reasonably mislead an individual into believing that the discount plan is health insurance;
- (3) Make misleading, deceptive, or fraudulent representations regarding the discount or range of discounts offered by the discount plan; or
- (4) Pay pharmacies, dentists, or vision care providers fees for healthcare services or collect or accept money from a member to pay a pharmacy, dentist, or vision care provider for healthcare services provided under the discount plan,

unless the operator or marketer has an active certificate of authority to act as a third-party administrator.

(b) An operator shall approve in writing, prior to the marketer's use, all cards and distributed materials used by marketers to offer, sell, market, advertise, or otherwise distribute the discount plan.

56-62-106. Violations — Penalties.

(a) As part of an examination or investigation, the commissioner may request, and the operator or marketer shall provide, copies of materials that are distributed to prospective members.

(b) After notice and hearing, the commissioner may levy an administrative penalty, in an amount up to ten thousand dollars (\$10,000), for each violation of this chapter. Each day of a continuing violation constitutes a separate violation for purposes of this chapter.

SECTION 2. Tennessee Code Annotated, Sections 56-57-103, 56-57-104, 56-57-105, and 56-57-106, are amended by deleting the sections and substituting:

56-57-103.

A prescription drug discount plan issued pursuant to § 56-57-102 is subject to regulation by the department and compliance with laws applicable to pharmacy discount cards, including, but not limited to, chapter 62 of this title.

SECTION 3. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 4. For the purpose of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect July 1, 2021, the public welfare requiring it.